

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

Filed: May 10, 2022

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CHARLA CLENDON, as Personal	*	
Representative of the Estate of Edward	*	
Alexander Clendon,	*	UNPUBLISHED
	*	
Petitioner,	*	No. 18-819V
	*	
v.	*	Special Master Dorsey
	*	
SECRETARY OF HEALTH	*	Decision Based on Stipulation; Influenza
AND HUMAN SERVICES,	*	("Flu"); Chronic Inflammatory
	*	Demyelinating Polyneuropathy ("CIDP").
Respondent.	*	
	*	
* * * * *	*	

Nancy R. Meyers, Turning Point Litigation, Greensboro, NC, for Petitioner.
Zoe Wade, U.S. Department of Justice, Washington, DC, for Respondent.

DECISION BASED ON STIPULATION¹

On June 11, 2018, Edward Clendon ("Mr. Clendon") filed a petition for compensation under the National Vaccine Injury Compensation Program ("Vaccine Act" or "the Program"), 42 U.S.C. § 300aa-10 et seq. (2012).² Petitioner alleged that he suffered chronic inflammatory demyelinating polyneuropathy ("CIPD") as the result of an influenza ("flu") vaccination he received on October 2, 2015. Petition at Preamble (ECF No. 1). Upon his death, his wife Charla Clendon ("Petitioner"), as personal representative of his estate, was substituted as Petitioner.

¹ Because this Decision contains a reasoned explanation for the action in this case, the undersigned is required to post it on the United States Court of Federal Claims' website in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services). **This means the Decision will be available to anyone with access to the Internet.** In accordance with Vaccine Rule 18(b), petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, the undersigned agrees that the identified material fits within this definition, the undersigned will redact such material from public access.

² The National Vaccine Injury Compensation Program is set forth in Part 2 of the National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755, codified as amended, 42 U.S.C. §§ 300aa-10 to -34 (2012) ("Vaccine Act" or "the Act"). All citations in this Decision to individual sections of the Vaccine Act are to 42 U.S.C.A. § 300aa.

On May 10, 2022, the parties filed a stipulation recommending an award of compensation to Petitioner. Stipulation (ECF No. 111). Respondent denies that the flu vaccine caused or significantly aggravated Mr. Clendon's alleged CIDP, or any other injury, or his subsequent death. Id. at ¶ 6. Nevertheless, the parties agree to the joint stipulation, attached hereto as Appendix A. The undersigned finds the stipulation reasonable and adopts it as the decision of the Court in awarding damages, on the terms set forth therein.

The parties stipulate that Petitioner shall receive the following compensation:

(1) A lump sum of \$75,000.00 in the form of a check payable to Petitioner, as legal representative of the Estate of Edward Alexander Clendon.

This amount represents compensation for all damages that would be available under 42 U.S.C. § 300aa-15(a). Stipulation at ¶ 8.

The undersigned approves the requested amount for Petitioner's compensation. Accordingly, an award should be made consistent with the stipulation.

In the absence of a motion for review filed pursuant to RCFC Appendix B, the Clerk of Court **SHALL ENTER JUDGMENT** in accordance with the terms of the parties' stipulation.³

IT IS SO ORDERED.

s/Nora Beth Dorsey
Nora Beth Dorsey
Special Master

³ Pursuant to Vaccine Rule 11(a), entry of judgment is expedited by the parties' joint filing of notice renouncing the right to seek review.

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS**

CHARLA CLENDON, as Personal
Representative of the Estate of Edward
Alexander Clendon,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

No. 18-819V ECF

Special Master Dorsey

STIPULATION

The parties hereby stipulate to the following matters:

1. Edward Clendon ("Mr. Clendon" or "decedent") filed a petition for vaccine compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10 to 34 (the "Vaccine Program"). Upon his death, his wife Charla Clendon ("petitioner"), as personal representative of his estate, was substituted as petitioner herein. The petition seeks compensation for injuries allegedly related to Mr. Clendon's receipt of the influenza ("flu") vaccine, which vaccine is contained in the Vaccine Injury Table (the "Table"), 42 C.F.R. § 100.3 (a).

2. Mr. Clendon received a flu vaccine on October 2, 2015.

3. The vaccine was administered within the United States.

4. Petitioner alleges that Mr. Clendon developed chronic inflammatory demyelinating polyneuropathy ("CIDP") following receipt of the flu vaccine and that his alleged injury was caused by the vaccine. Petitioner further alleges that Mr. Clendon experienced the residual

effects of this condition for more than six months. Petitioner alleges in the alternative, that Mr. Clendon's CIDP was significantly aggravated by receipt of the flu vaccine.

5. Petitioner represents that there has been no prior award or settlement of a civil action for damages as a result of the decedent's alleged injury.

6. Respondent denies that the vaccine caused or significantly aggravated the decedent's alleged CIDP, or any other injury, or his subsequent death.

7. Maintaining their above-stated positions, the parties nevertheless now agree that the issues between them shall be settled, and that a decision should be entered awarding the compensation described in paragraph 8 of this Stipulation.

8. As soon as practicable after an entry of judgment reflecting a decision consistent with the terms of this Stipulation, and after petitioner has filed an election to receive compensation pursuant to 42 U.S.C. § 300aa-21(a)(1), the Secretary of Health and Human Services will issue the following vaccine compensation payment:

A lump sum of **\$75,000.00** in the form of a check payable to petitioner, as legal representative of the Estate of Edward Alexander Clendon. This amount represents compensation for all damages that would be available under 42 U.S.C. § 300aa-15(a).

9. As soon as practicable after the entry of judgment on entitlement in this case, and after petitioner has filed both a proper and timely election to receive compensation pursuant to 42 U.S.C. § 300aa-21(a)(1), and an application, the parties will submit to further proceedings before the special master to award reasonable attorneys' fees and costs incurred in proceeding upon this petition.

10. Petitioner and her attorney represent that compensation to be provided pursuant to this Stipulation is not for any items or services for which the Program is not primarily liable

under 42 U.S.C. § 300aa-15(g), to the extent that payment has been made or can reasonably be expected to be made under any State compensation programs, insurance policies, Federal or State health benefits programs (other than Title XIX of the Social Security Act (42 U.S.C. § 1396 et seq.)), or by entities that provide health services on a pre-paid basis.

11. Payment made pursuant to paragraph 8 and any amounts awarded pursuant to paragraph 9 of this Stipulation will be made in accordance with 42 U.S.C. § 300aa-15(i), subject to the availability of sufficient statutory funds.

12. Petitioner represents that she presently is, or within 90 days of the date of judgment will become, duly authorized to serve as the legal representative of Edward Alexander Clendon's estate under the laws of the State of North Carolina. No payments pursuant to this Stipulation shall be made until petitioner provides the Secretary with documentation establishing her appointment as legal representative of Mr. Clendon's estate. If petitioner is not authorized by a court of competent jurisdiction to serve as legal representative of the estate of Edward Alexander Clendon at the time a payment pursuant to this Stipulation is to be made, any such payment shall be paid to the party or parties appointed by a court of competent jurisdiction to serve as legal representative of the estate of Edward Alexander Clendon upon submission of written documentation of such appointment to the Secretary.

13. In return for the payments described in paragraphs 8 and 9, petitioner, individually and in her capacity as the personal representative of the Estate of Edward Alexander Clendon, on her own behalf, and on behalf of the Estate and the decedent's heirs, executors, administrators, successors or assigns, does forever irrevocably and unconditionally release, acquit and discharge the United States and the Secretary of Health and Human Services from any and all actions or

causes of action (including agreements, judgments, claims, damages, loss of services, expenses and all demands of whatever kind or nature) that have been brought, could have been brought, or could be timely brought in the Court of Federal Claims, under the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10 et seq., on account of, or in any way growing out of, any and all known or unknown, suspected or unsuspected personal injuries to or death of the decedent resulting from, or alleged to have resulted from, the flu vaccination administered on October 2, 2015, as alleged in a petition for vaccine compensation filed on or about June 11, 2018, in the United States Court of Federal Claims as petition No. 18-819V.

14. If the special master fails to issue a decision in complete conformity with the terms of this Stipulation or if the Court of Federal Claims fails to enter judgment in conformity with a decision that is in complete conformity with the terms of this Stipulation, then the parties' settlement and this Stipulation shall be voidable at the sole discretion of either party.

15 This Stipulation expresses a full and complete negotiated settlement of liability and damages claimed under the National Childhood Vaccine Injury Act of 1986, as amended, except as otherwise noted in paragraph 9 above. There is absolutely no agreement on the part of the parties hereto to make any payment or to do any act or thing other than is herein expressly stated and clearly agreed to. The parties further agree and understand that the award described in this Stipulation may reflect a compromise of the parties' respective positions as to liability and/or amount of damages, and further, that a change in the nature of the injury or condition or in the items of compensation sought, is not grounds to modify or revise this agreement.

16. This Stipulation shall not be construed as an admission by the United States or the Secretary of Health and Human Services that the flu vaccine caused or significantly aggravated the decedent's alleged CIDP or any other injury or his death.

18. All rights and obligations of petitioner hereunder in her capacity as personal representative of the Estate of Edward Alexander Clendon shall apply equally to petitioner's heirs, executors, administrators, successors, and/or assigns.


END OF STIPULATION

Respectfully submitted,

PETITIONER:


CHARLA CLENDON

**ATTORNEY OF RECORD FOR
PETITIONER:**



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**AUTHORIZED REPRESENTATIVE
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George R. Grimes - Digitally signed by George R.
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Date: 2022.04.26 17:10:36 -04'00'

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Dated: 05/10/2022